

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JANEL N. SMITH,)
vs. Plaintiff,) Civil No. 15-33-NJR-PMF
UNITED STATES and BUREAU OF)
ALCOHOL, TOBACCO, FIREARMS)
AND EXPLOSIVES,)
Defendants.)

**MOTION TO DISMISS BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND EXPLOSIVES AS A DEFENDANT**

The defendant, Bureau of Alcohol, Tobacco, Firearms and Explosives, by its attorneys, Stephen R. Wigginton, United States Attorney for the Southern District of Illinois, and Laura J. Jones, Assistant United States Attorney, moves this Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Bureau of Alcohol, Tobacco, Firearms and Explosives as a defendant with prejudice and states as follows:

The plaintiff, Janel N. Smith, filed a complaint on December 3, 2014, in the U.S. District Court for the District of Columbia.¹ (Doc. 1). *Smith v. United States*, No. 1:14-cv-02052. The plaintiff named the United States as a defendant. By *sua sponte* order dated December 17, 2014, the U.S. District Court for the District of Columbia transferred the case to the U.S. District Court for the Southern District of Illinois. (Doc. 2). Plaintiff filed an amended complaint in the U.S. District Court for the District of Columbia on December 22, 2014, adding the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a defendant. (Doc. 3). Plaintiff in the amended

¹ The Attorney General's Office was served with a copy of the complaint.

complaint stated that on December 19, 2014, the original complaint was amended to add ATF.² (Doc. 3, p. 1).

On January 12, 2015, the Clerk of the U.S. District Court for the Southern District of Illinois notified plaintiff of the new case number. (Doc. 5). Plaintiff subsequently served the United States Attorney's Office (USAO) and ATF with a third complaint entitled "Original Complaint for Damages Under the Federal Tort Claims Act" with the new case number. The "third complaint" was dated January 28, 2015, on its face and named the United States and ATF as defendants. The "third complaint" was never filed.

The United States and ATF filed Motions to Dismiss on April 2, 2015. (Docs. 8 and 9). The plaintiff responded. (Doc. 10). The Court denied the Motions to Dismiss and granted plaintiff until July 27, 2015, to properly effect service on defendants with a summons and operative complaint. (Doc. 12). ATF was subsequently served with a copy of the amended complaint. (Doc. 3).

ATF is an improper party and cannot be sued. *See Blackmar v. Guerre*, 342 U.S. 512, 515 (1952). Absent a waiver, sovereign immunity shields the United States and its agencies from suit. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994); *see* 28 U.S.C. § 2679(a) ("The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) . . ."). Plaintiff has sued the United States pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80, and "the only proper defendant in an FTCA action is the United States." *Jackson v. Kotter*, 541 F.3d 688, 693 (7th Cir. 2008). Because plaintiff may not sue ATF, this Court should dismiss the case against it with prejudice.

² Plaintiff did not attempt service of the amended complaint.

WHEREFORE, the defendant, Bureau of Alcohol, Tobacco, Firearms and Explosives, requests that this Court dismiss the amended complaint with prejudice.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES

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Plaintiff,)
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UNITED STATES and BUREAU OF)
ALCOHOL, TOBACCO, FIREARMS)
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)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I hereby certify that I mailed, by United States Postal Service, the document to the following non-registered participant:

Janel N. Smith
813 Columbia Avenue
Fairview Heights, IL 62208

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES

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